

1 WILSON TURNER KOSMO LLP
2 CLAUDETTE G. WILSON (110076)
3 MERYL C. MANEKER (188342)
4 KATHERINE K. POTIER (171783)
5 LISA A. HILL (223995)
6 550 West C Street, Suite 1050
7 San Diego, California 92101
Telephone: (619) 236-9600
Facsimile: (619) 236-9669
E-mail: cwilson@wilsonturnerkosmo.com
E-mail: mmaneker@wilsonturnerkosmo.com
E-mail: kpother@wilsonturnerkosmo.com
E-mail: lhill@wilsonturnerkosmo.com

8 Attorneys for Defendant
TARGET CORPORATION
9

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 DANYELL MURPHY and CANDI PERRY,
individually and on behalf of all others similarly
situated,

14 Plaintiffs,

15 v.

16 TARGET CORPORATION,

17 Defendant.

Case No. 09cv1436-CAB (WMC)

**DEFENDANT TARGET
CORPORATION'S MOTION AND
NOTICE OF MOTION FOR
SUMMARY JUDGMENT, OR, IN THE
ALTERNATIVE, A
DETERMINATION OF FACTS NOT
GENUINELY IN DISPUTE;
APPLICATION FOR EXEMPTION
FROM WAGE ORDER**

[Fed. R. Civ. P. 56(c), (g); Wage Order
No. 7-2001, Section 17]

Complaint Filed: May 19, 2009

Date: August 22, 2012
Time: 2:00 p.m.

**ORAL ARGUMENT REQUESTED
SUBJECT TO COURT APPROVAL**

District Judge: Cathy Ann
Bencivengo
Courtroom: 2

Magistrate Judge: William McCurine, Jr.
Courtroom: C

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, at 2:00 p.m. on August 22, 2012, or as soon thereafter
3 as the matter may be heard, in Courtroom 2 of the above-entitled Court, located at 940 Front Street,
4 San Diego, California, 92101, Defendant Target Corporation (“Target”) will, and hereby does,
5 respectfully move the Court pursuant to Federal Rule of Civil Procedure 56(c) for summary
6 judgment in its entirety on the First Amended Complaint of Plaintiffs Danyell Murphy and Candi
7 Perry on the ground that there is no genuine issue as to any material fact and that Target is entitled to
8 judgment as a matter of law. In the alternative, Target applies to this Court for either (1) an order
9 granting it an exemption pursuant to California’s Wage Order No. 7-2001, Section 17 from Wage
10 Order No. 7-2001, Section 14, or (2) an order stating the following material facts are not genuinely
11 in dispute and treating the facts as established in the case pursuant to Federal Rule of Civil
12 Procedure 56(g):

13 (1) Target’s current checkstand configurations do not reasonably
14 permit the use of a seat;
15 (2) Target did not willfully violate Section 14;
16 (3) any violation of Section 14 by Target was inadvertent;
17 (4) enforcement of Section 14 would not materially affect the welfare
18 or comfort of Target Cashiers; and
19 (5) enforcement of Section 14 would work an undue hardship on
20 Target.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

This Motion is based upon this Notice of Motion, the Points and Authorities in Support of the Motion, the Notice of Lodgment, the Notice of Manual Filing, the Request for Judicial Notice, the Compendium of Target Cashier Declarations, and the Declarations of Julie Wegmiller, Dr. William Marras, Mitchell Knoll, and Katherine K. Pothier, Esq. submitted herewith, all pleadings and documents on file herein, and upon such other and further oral and documentary evidence as may be presented at or before the hearing on this Motion.

Dated: June 13, 2012

WILSON TURNER KOSMO LLP

By: /s/ Claudette G. Wilson
CLAUDETTE G. WILSON
Attorneys for Defendant
TARGET CORPORATION